UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jason K. Fisher, Plaintiff, v. Flint Hills Resources Pine Bend, LLC; Koch Industries, Inc.; Flint Hills Resources, LP; and Koch Business Solutions, Inc., Defendants.	Case No. 0:17-cv-00689-DWF-HB **DEFENDANTS' ANSWER TO COMPLAINT**

Defendants Flint Hills Resources Pine Bend, LLC, Koch Industries, Inc., Flint Hills Resources, LP, and Koch Business Solutions, Inc. (collectively "Defendants")[1] as and for their timely Answer to Plaintiff's Complaint in the above-captioned action, deny each and every allegation set forth in Plaintiff's Complaint except as hereinafter specifically admitted, qualified, explained, clarified, or otherwise pleaded, and specifically answer as follows:

INTRODUCTION

1. Paragraph 1 of Plaintiff's Complaint does not require a response. To the extent a response is required, Defendants state that the Complaint speaks for itself.

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[1] Flint Hills Resources Pine Bend, LLC is Plaintiff's employer and, therefore, the only proper Defendant to this Action.

PARTIES

2. Defendants admit the allegations in Paragraph 2 of Plaintiff's Complaint, upon information and belief.

3. Defendants admit the allegations in Paragraph 3 of Plaintiff's Complaint, except clarify that Defendant Flint Hills Resources Pine Bend, LLC is a Delaware Limited Liability Company.

4. Defendants deny the allegations in Paragraph 4 of Plaintiff's Complaint.

5. Defendants admit the allegations in Paragraph 5 of Plaintiff's Complaint, except clarify that Flint Hills Resources, LP is a Delaware Limited Partnership.

6. Defendants admit the allegations in Paragraph 6 of Plaintiff's Complaint, except clarify that Defendant Koch Business Solutions, LP is a Delaware Limited Partnership.

7. Defendants deny the allegations in Paragraph 7 of Plaintiff's Complaint, and state that Flint Hills Resources Pine Bend LLC is the only named defendant conducting business in Rosemount, MN.

8. Defendants deny the allegations in Paragraph 8 of Plaintiff's Complaint, as Flint Hills Resources Pine Bend, LLC is Plaintiff's employer. Further responding, Defendants Koch Industries, Inc., Flint Hills Resources, LP, and Koch Business Solutions, LP were not and never were Plaintiff's employers.

JURISDICTION AND VENUE

1. Paragraph 1[2] of Plaintiff's Complaint calls for a legal conclusion and therefore no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

2. Paragraph 2 of Plaintiff's Complaint calls for a legal conclusion and therefore no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

3. Paragraph 3 of Plaintiff's Complaint calls for a legal conclusion and therefore no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

FACTUAL BACKGROUND

4. Defendants admit the allegations in Paragraph 4 of Plaintiff's Complaint.

5. Defendants admit the allegations in Paragraph 5 of Plaintiff's Complaint.

6. Defendants admit the allegations in Paragraph 6 of Plaintiff's Complaint.

7. Defendants admit the allegations in Paragraph 7 of Plaintiff's Complaint.

8. Defendants admit the allegations in Paragraph 8 of Plaintiff's Complaint.

9. Defendants admit the allegations in Paragraph 9 of Plaintiff's Complaint.

10. Defendants admit the allegations in Paragraph 10 of Plaintiff's Complaint

11. Defendants admit the allegations in Paragraph 11 of Plaintiff's Complaint.

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[2] Plaintiff's Complaint contains Paragraphs 1-8 in the Introduction and Parties sections. The numbering then restarts at Paragraph 1 in the Jurisdiction and Venue section and continues through Paragraph 66. Defendants' Answer follows the numbering in the Complaint.

12. Defendants admit the allegations in Paragraph 12 of Plaintiff's Complaint except state that there are more than 21 tests in total.

13. Defendants admit the allegations in Paragraph 13 of Plaintiff's Complaint.

14. Paragraph 14 of Plaintiff's Complaint does not require a response. To the extent a response is required, Defendants state that any written policies speak for themselves.

15. Defendants admit the allegations in Paragraph 15 of Plaintiff's Complaint.

16. In response to the allegations in Paragraph 16 of Plaintiff's Complaint, Defendants lack sufficient information to admit or deny the allegations and therefore deny the same. Defendants further state that Plaintiff provided no work restrictions when he returned to work in May 2015. Plaintiff provided medical documentation of certain work restrictions, including some of those alleged in Paragraph 16 of Plaintiff's Complaint, in 2016.

17. In response to the allegations in Paragraph 17 of Plaintiff's Complaint, Defendants admit that Plaintiff began training for the Lab Analyst position on or about May 7, 2015, but deny the remaining allegations.

18. Defendants admit the allegations in Paragraph 18 of Plaintiff's Complaint upon information and belief.

19. Defendants deny the allegations in Paragraph 19 of Plaintiff's Complaint.

20. Defendants deny the allegations in Paragraph 20 of Plaintiff's Complaint.

21. Defendants deny the allegations in Paragraph 21 of Plaintiff's Complaint, and state that Mr. Mealman went out on leave.

22. Defendants deny the allegations in Paragraph 22 of Plaintiff's Complaint.

23. Defendants deny the allegations in Paragraph 23 of Plaintiff's Complaint, except state that Holly McCracken was Plaintiff's supervisor and therefore supervised his training.

24. In response to the allegations in Paragraph 24 of Plaintiff's Complaint, Defendants admit that McCracken is not a chemist but deny that she was Plaintiff's trainer.

25. In response to the allegations in Paragraph 25 of Plaintiff's Complaint, Defendants admit that Erin Collins was present for some of Plaintiff's testing. Defendants deny the remaining allegations in Paragraph 25 of Plaintiff's Complaint.

26. Defendants deny the allegations in Paragraph 26 of Plaintiff's Complaint.

27. Defendants deny the allegations in Paragraph 27 of Plaintiff's Complaint.

28. Defendants deny the allegations in Paragraph 28 of Plaintiff's Complaint.

29. Defendants deny the allegations in Paragraph 29 of Plaintiff's Complaint.

30. Defendants deny the allegations in Paragraph 30 of Plaintiff's Complaint.

31. Defendants deny the allegations in Paragraph 31 of Plaintiff's Complaint, except state that Plaintiff failed to demonstrate sufficient progress in his training and was therefore returned to his prior position.

32. In response to the allegations in Paragraph 32 of Plaintiff's Complaint, Defendants state that it engaged in an interactive process with Plaintiff in 2016.

33. Defendants deny the allegations in Paragraph 33 of Plaintiff's Complaint and state that it engaged in an interactive process with Plaintiff in 2016. Any written communications with Plaintiff speak for themselves.

34. Defendants deny the allegations in Paragraph 34 of Plaintiff's Complaint, and state that Plaintiff was not qualified for the position because he was unable to pass the required training.

35. Defendants deny the allegations in Paragraph 35 of Plaintiff's Complaint.

36. In response to the allegations in Paragraph 36 of Plaintiff's Complaint, Defendants admit that Plaintiff filed a Charge with the EEOC, but deny that it was filed on or about November 15, 2016. Defendants further state that the Charge was dated December 5, 2016.

37. Defendants admit the allegations in Paragraph 37 of Plaintiff's Complaint.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, *et seq.*
(Alleged Disability Discrimination)

38. Defendants reallege and incorporate all of their responses to Paragraphs 1 through 8, and 1 through 37 above, as well as their responses to all of the remaining Paragraphs.

39. Paragraph 39 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

40. Paragraph 40 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

41. Paragraph 41 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

42. Paragraph 42 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

43. Paragraph 43 of Plaintiff's Complaint calls for a legal conclusion and, therefore no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 43 of Plaintiff's Complaint but state that Plaintiff provided medical documentation in 2016 describing his then limitations.

44. Paragraph 44 of Plaintiff's Complaint calls for a legal conclusion and, therefore no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 44 of Plaintiff's Complaint but state that Plaintiff provided medical documentation in 2016 describing his then limitations.

45. Defendants deny the allegations in Paragraph 45 of Plaintiff's Complaint.

46. Defendants deny the allegations in Paragraph 46 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

47. Defendants deny the allegations in Paragraph 47 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

COUNT II
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, *et seq.*
(Alleged Failure to Accommodate)

48. Defendants reallege and incorporate all of their responses to Paragraphs 1 through 8, and 1 through 47 above, as well as their responses to all of the remaining Paragraphs.

49. Paragraph 49 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

50. In response to the allegations in Paragraph 50 of Plaintiff's Complaint, Defendants state that it engaged in an interactive process with Plaintiff in 2016.

51. Defendants deny the allegations in Paragraph 51 of Plaintiff's Complaint.

52. Defendants deny the allegations in Paragraph 52 of Plaintiff's Complaint.

53. Defendants deny the allegations in Paragraph 53 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

54. Defendants deny the allegations in Paragraph 54 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

COUNT III
VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT
Minn. Stat. § 363A.01, *et seq.*
(Alleged Disability Discrimination)

55. Defendants reallege and incorporate all of their responses to Paragraphs 1 through 8, and 1 through 54 above, as well as their responses to all of the remaining Paragraphs.

56. Paragraph 56 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

57. Defendants deny the allegations in Paragraph 57 of Plaintiff's Complaint.

58. Defendants deny the allegations in Paragraph 58 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

59. Defendants deny the allegations in Paragraph 59 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

COUNT IV
VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT
Minn. Stat. § 363A.01, *et seq.*
(Alleged Failure to Accommodate)

60. Defendants reallege and incorporate all of their responses to Paragraphs 1 through 8, and 1 through 59 above, as well as their responses to all of the remaining Paragraphs.

61. Paragraph 61 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants state that the cited statute speaks for itself.

62. Paragraph 62 of Plaintiff's Complaint calls for a legal conclusion and, therefore, no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 62 of Plaintiff's Complaint but state that Plaintiff provided medical documentation in 2014, 2015, and 2016, describing his then limitations.

63. Defendants deny the allegations in Paragraph 63 of Plaintiff's Complaint and further state that it engaged in an interactive process with Plaintiff in 2016.

64. Defendants deny the allegations in Paragraph 64 of Plaintiff's Complaint.

65. Defendants deny the allegations in Paragraph 65 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

66. Defendants deny the allegations in Paragraph 66 of Plaintiff's Complaint and further deny Plaintiff's entitlement to any alleged remedies and/or damages in any alleged causes of action in the Complaint.

ALLEGED PRAYER FOR RELIEF

Defendants deny the allegations and Plaintiff's alleged entitlement to any of the relief set forth in the WHEREFORE clause and sub-clauses in Plaintiff's Complaint.

AFFIRMATIVE AND OTHER DEFENSES

Further answering, Defendants allege the following affirmative and other defenses:

FIRST DEFENSE

67. Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief may be granted. Further, Plaintiff's Complaint fails to state facts sufficient to state a claim that would support an award of actual, compensatory, punitive, or other damages against Defendants.

SECOND DEFENSE

68. Plaintiff's claimed damages, if any, are barred, in whole or in part, because Plaintiff suffered no recoverable damages; Plaintiff failed to mitigate his alleged damages, if any; and/or Plaintiff's damages, if any, are limited by operation of the benefits he may have received from collateral sources.

THIRD DEFENSE

69. Plaintiff's claimed damages, if any, were caused by his own conduct or by the conduct of other persons or entities over whom/which Defendants had no control and for whose conduct Defendants are not liable. Additionally and/or alternatively, Plaintiff assumed the risk, was contributorily responsible, and/or cannot recover because there are superseding causes.

FOURTH DEFENSE

70. If Defendants' employee(s) committed the acts alleged in the Complaint, which allegations are denied, such acts were not foreseeable, committed outside the scope of employment and not by an agent of Defendants and, therefore, Defendants are not liable for such acts.

FIFTH DEFENSE

71. Plaintiff's Complaint fails, in whole or in part, because Defendants acted in good faith, upon proper occasion, and with proper motive. Defendants' conduct with respect to Plaintiff was based on legitimate, non-retaliatory reasons, and was not in violation of the Americans with Disabilities Act, Minnesota Human Rights Act, or any other statute, law, rule, regulation, or ordinance. Moreover, the same decisions would have been reached regarding Plaintiff for legitimate reasons not related to any protected categories. No action taken by Defendants with respect to Plaintiff was unlawful and/or willful as a matter of law.

SIXTH DEFENSE

72. Plaintiff's Complaint fails, in whole or in part, because the rights and obligations of the parties are governed by a valid collective bargaining agreement, and Defendants adhered to the requirements of said collective bargaining agreement in addressing any and all issues with Plaintiff's employment.

SEVENTH DEFENSE

73. Plaintiff's claims fail, in whole or in part, to the extent Plaintiff seeks multiple recoveries for the same alleged conduct.

EIGHTH DEFENSE

74. Plaintiff's Complaint fails, in whole or in part, because Plaintiff cannot prove a *prima facie* case of discrimination and/or retaliation.

NINTH DEFENSE

75. Plaintiff's Complaint fails, in whole or in part, because of the business judgment rule.

TENTH DEFENSE

76. Defendants' actions were required by business necessity and were based on factors other than Plaintiff's alleged disability.

ELEVENTH DEFENSE

77. Plaintiff's claims fail, in whole or in part, because Plaintiff failed to notify Defendants of the existence of a disability as that term is defined in the ADA and/or the MHRA.

TWELFTH DEFENSE

78. Plaintiff's claims fail, in whole or in part, because he did not request an accommodation pursuant to the ADA and/or MHRA.

THIRTEENTH DEFENSE

79. Plaintiff's claims are not actionable because the challenged employment practices are justified by legitimate, non-discriminatory, and non-pretextual business reasons unrelated to Plaintiff's alleged disability.

FOURTEENTH DEFENSE

80. The allegations and/or claims in Plaintiff' Complaint, based on conduct occurring prior to 300 days of the filing of Plaintiff's charge with the EEOC and /or based on conduct occurring outside of the time frame identified in Plaintiff's charge with the EEOC, are barred by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(e), as incorporated into Section 107(a) of the ADA, 42 U.S.C. § 12117(a).

FIFTEENTH DEFENSE

81. The allegations and/or claims in Plaintiff' Complaint, based on conduct occurring prior to one year of the filing of Plaintiff's charge with the MDHR and/or based on conduct occurring outside of the time frame identified in Plaintiff's charge with the MDHR, are barred by Minn. Stat. § 363A.28.

SIXTEENTH DEFENSE

82. Plaintiff's Complaint fails in whole as against Defendants Flint Hills Resources, LP, Koch Industries, Inc., and Koch Business Solutions, Inc., because those Defendants are not, nor have they ever been, Plaintiff's employer.

SEVENTEENTH DEFENSE

83. Plaintiff's claims are barred against Defendants Koch Industries, Inc., and Koch Business Solutions, Inc. due to failure of service of process and/or insufficiency of service of process.

EIGHTEENTH DEFENSE

84. The extent to which Plaintiff's Complaint may be barred by any remaining affirmative or other defenses, including those contemplated by the Rules of Civil

Procedure, cannot be determined at this time without the benefit of additional discovery. Thus, as separate and affirmative defenses to Plaintiff's Complaint, Defendants reserve their right to assert all affirmative and other defenses as appropriate.

WHEREFORE, having responded to the allegations in Plaintiff's Complaint, Defendants hereby request that the Court enter an Order:

A. Dismissing the Complaint in its entirety, with prejudice, and awarding Defendants their costs and expenses, including reasonable attorneys' fees, as set forth under the law; and

B. Awarding Defendants such other relief as the Court deems just and proper.

Dated: March 28, 2017

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P. C.

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